

**COPY**

**BEFORE THE ILLINOIS COMMERCE COMMISSION**

**BERKELEY SCHOOL DISTRICT  
NO. 87, COOK COUNTY, ILLINOIS**

**Petitioner,**

**v.**

**UNION PACIFIC RAILROAD COMPANY,**

**Respondent.**

**RECEIVED**  
APR 10 2002

Illinois Commerce Commission  
RAIL SAFETY SECTION

702-0035

**COMPLAINT SEEKING THE APPROVAL OF THE ILLINOIS  
COMMERCE COMMISSION TO CONDEMN RAILROAD PROPERTY**

The Petitioner, Berkeley School District No. 87, Cook County, Illinois, through its attorneys, Scariano, Elch, Himes and Petrarca, Chtd. brings this Complaint pursuant to Section 7-102 of the *Code of Civil Procedure*, 735 ILCS 5/7-102, and Illinois Commerce Commission Rule 200.170, 83 Ill. Admin. Code 200.170.

1. Respondent Union Pacific Railroad Company (hereinafter "Respondent") has its corporate real estate office located at 1800 Farnam Street, Omaha, Nebraska 69102. The registered agents for Respondent on file with the Illinois Commerce Commission are CT Corporation System, 208 S. LaSalle Street, Chicago, Illinois 60604, Mack Shumate 101 N. Wacker Drive, Suite 1920, Chicago, Illinois 60606, and Dave McKernan, 210 N. 13th Street, Room 1612, St. Louis, Missouri 63103-2388.

2. Petitioner Berkeley School District No. 87, Cook County, Illinois (hereinafter "Petitioner") is a public school district organized and operated in accordance with the *Illinois School Code*, 105 ILCS 5/1-1 et seq.

**DOCKETED**

3. Petitioner has the authority to condemn land through eminent domain proceedings under Section 16-6 of the *Illinois School Code*, 105 ILCS 5/16-6, and Article VII of the *Code of Civil Procedure*, 735 ILCS 5/7-101 et seq.

4. Respondent is a Delaware corporation involved in the operation of railroads and subject to the jurisdiction of and regulation by the Illinois Commerce Commission.

5. Respondent owns a strip of land 670 feet by 40 feet on the west side of Wolf Road approximately 165 feet south of St. Charles Road in the Village of Berkeley, Cook County, Illinois (hereinafter the "Property") and legally described on Exhibit A.

6. There is no railroad track or railroad equipment located on the Property.

7. The Petitioner currently has a lease from the Respondent to use the property.

8. The Petitioner has leased the Property from the Respondent or its predecessors since 1975. (See copy of current Lease of Property attached hereto as Exhibit B)

9. Respondent has offered to sell the Property to the Petitioner. (See copy of November 22, 1999 proposed Letter of Understanding attached hereto as Exhibit C).

10. The Petitioner has used the Property for parking facilities for a school building located on property adjacent to the Property and requires the Property for its continued use as a parking lot.

11. The Property has not been used for railroad purposes since at least 1975 and the Respondent does not have any plans to use the property for railroad purposes.

12. The Petitioner's taking of the property through eminent domain will not affect any railroad operations.

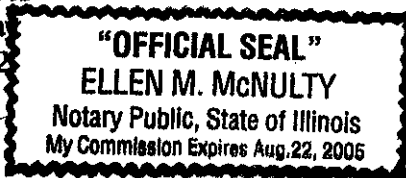
13. Petitioner declines to accept notices via e-mail.

WHEREFORE, Petitioner Berkeley School District No. 87, Cook County, Illinois, requests the Illinois Commerce Commission to approve the Petitioner's condemnation through eminent domain of the property described on Exhibit A.

*Joseph Palermo*

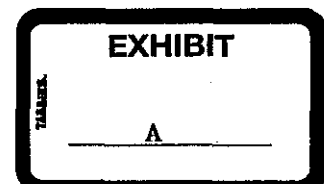
Subscribed to and Sworn to  
before me this 9th day  
of April, 2002

*Ellen M. McNulty*



ROBERT H. ELLCH  
ALAN M. MULLINS  
SCARIANO, ELLCH, HIMES AND PETRARCA, CHTD.  
180 N. Stetson, Suite 3100  
Two Prudential Plaza  
Chicago, Illinois 60601-6714  
312/565-3100 ext. 240  
Fax No. 312/565-0000  
e-mail-[amullins@edlawyer.com](mailto:amullins@edlawyer.com)

THAT PART OF LOT ONE (1) IN THE NORTH HALF OF THE NORTHEAST QUARTER OF SECTION SEVEN (7) TOWNSHIP THIRTY-NINE (39) NORTH RANGE TWELVE (12) EAST OF THIRD PRINCIPAL MERIDIAN, CONVEYED TO CHICAGO AND NORTHWESTERN RAILROAD PER DOCUMENT NUMBER 5034857, DESCRIBED AS COMMENCING AT THE POINT OF INTERSECTION OF THE NORTH LINE OF SAID SECTION WITH WEST LINE OF WOLF ROAD RUNNING THENCE WEST ON SAID NORTH LINE OF SECTION, SIX (6) FEET; THENCE SOUTH THREE HUNDRED AND THIRTY (330) FEET; THENCE WEST THIRTY-FOUR (34) FEET; THENCE SOUTH SIX HUNDRED AND SEVENTY (670) FEET; THENCE EAST FORTY (40) FEET TO SAID WEST LINE OF HIGHWAY; THENCE NORTH ALONG SAID WEST LINE OF HIGHWAY TO PLACE OF COMMENCEMENT, ALL SITUATED IN THE COUNTY OF COOK, IN THE STATE OF ILLINOIS.



**FILE COPY**

Folder: 0185-95  
Audit No: 179805

**LEASE OF PROPERTY**

THIS LEASE ("Lease") is entered into on the 27th day of July, 19 98 between UNION PACIFIC RAILROAD COMPANY ("Lessor") and BOARD OF EDUCATION, an Illinois municipal corporation, whose address is 5400 ST CHARLES ROAD, BERKELEY, IL 60163 ("Lessee").

IT IS AGREED BETWEEN THE PARTIES AS FOLLOWS:

**Article I. PREMISES; USE.**

Lessor leases to Lessee and Lessee leases from Lessor the premises ("Premises") at Berkeley, IL, as shown on the print dated April 27, 1998, marked Exhibit A, hereto attached and made a part hereof, subject to the provisions of this Lease and of Exhibit B attached hereto and made a part hereof. The Premises may be used for driveway and parking and for no other purpose.

**Article II. TERM.**

The term of this Lease shall commence on July 1, 1998, and unless sooner terminated as provided in this Lease, shall extend for one year; and thereafter, shall automatically be extended from year to year.

**Article III. RENT.**

A. Lessee shall pay to Lessor, in advance, rent of One Thousand One Hundred Sixty Dollars (\$1,160.00) per month. The rent shall be increased by Three Percent (3%) annually, cumulative and compounded.

B. Not more than once every Three (3) years, Lessor may redetermine the rent. In the event Lessor does redetermine the rent, Lessor shall notify Lessee of such change.

**Article IV. SPECIAL PROVISION - INSURANCE**

A. At all times during the term of this Lease, Lessee shall, at Lessee's sole cost and expense, procure and maintain the following insurance coverage:

General Public Liability providing bodily injury, including death, personal injury and property damage coverage with combined single limit of at least One Million Dollars (\$1,000,000.00) per occurrence and a general aggregate limit of at least One Million Dollars (\$1,000,000.00). This insurance shall provide Broad Form Contractual Liability covering the indemnity provisions contained in this Agreement, severability of interests, and name Lessor as an additional insured. If coverage is purchased on a "claims-made" basis, it shall provide for at least a three (3) year extended reporting or discovery period, which shall be invoked if insurance covering the time period of this Agreement is canceled.

**CODED**

**By:**  
**Date:**

RELW  
AUG 11 1998

**EXHIBIT**

**B**

B. Lessee shall furnish Lessor with certificate(s) of insurance evidencing the required coverage and, upon request, a certified duplicate original of the policy. The insurance company issuing the policy shall notify Lessor, in writing, of any material alteration including any change in the retroactive date in any "claims-made" policies or substantial reduction of aggregate limits, or cancellation at least thirty (30) days prior thereto. The insurance policy shall be written by a reputable insurance company or companies acceptable to Lessor or with a current Best's Insurance Guide Rating of B and Class VII or better, and which is authorized to transact business in the state where the Premises are located.

C. Lessee hereby waives its right of subrogation under the above insurance policy against Lessor for payment made to or on behalf of employees of Lessee or its agents or for loss of its owned or leased property or property under its care, custody and control while on or near the Premises or any other property of Lessor. Lessee's insurance shall be primary with respect to any insurance carried by Lessor.

#### Article V. SPECIAL PROVISION - CANCELLATION

Effective upon commencement of the term of this Lease, the Lease dated May 5, 1975, identified as Audit No. 179805, together with any and all supplements and amendments, is canceled and superseded by this Lease, except for any rights, obligations or liabilities arising under such prior lease before cancellation, including any consent to conditional assignment, chattel agreement, or consent to sublease.

IN WITNESS WHEREOF, the parties have executed this Lease as of the day and year first herein written.

UNION PACIFIC RAILROAD COMPANY

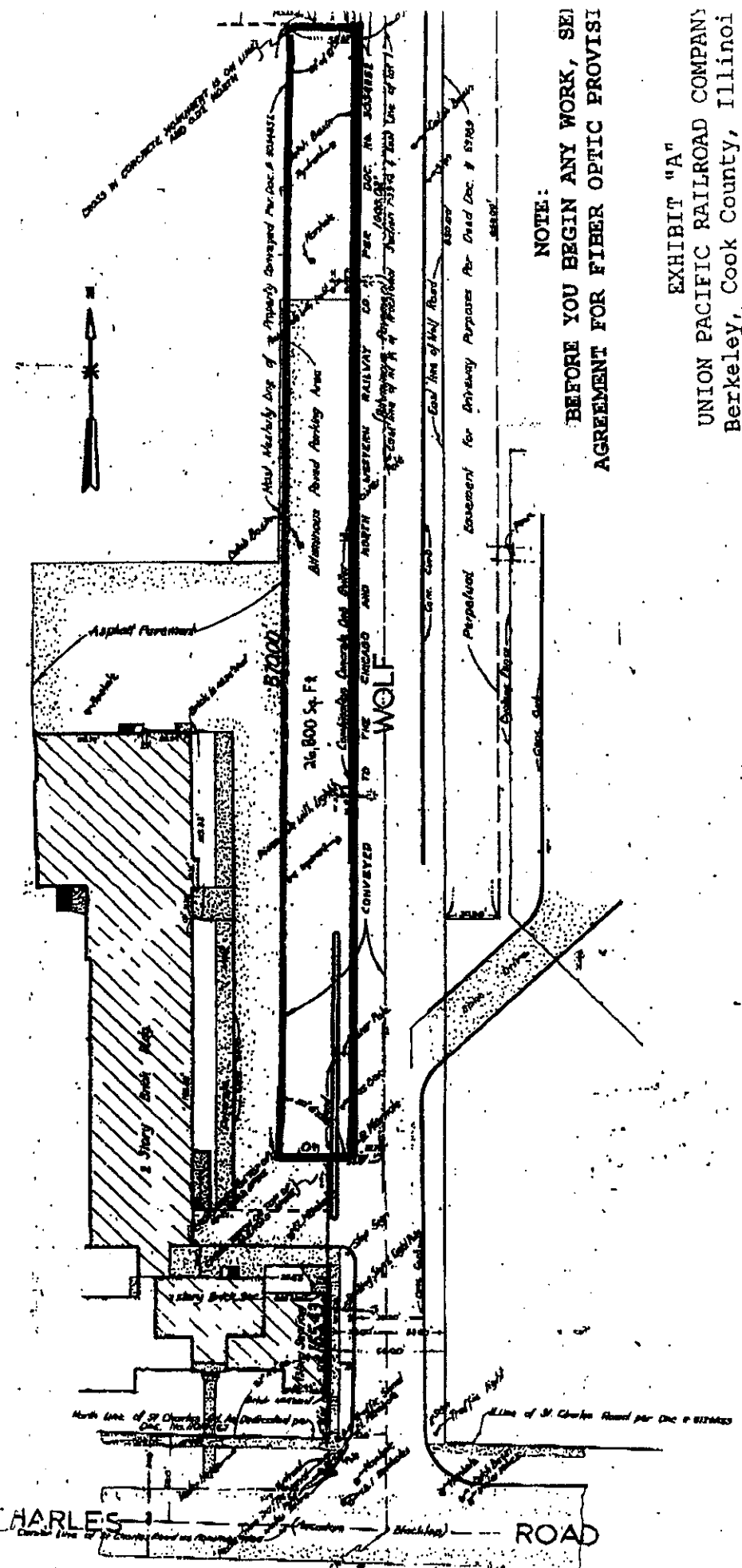
By: [Signature]  
Director - Real Estate

BOARD OF EDUCATION

By: [Signature]  
Title: President, Board of Education

NOTE: Cancels and supersedes Lease 179805 dated May 5, 1975.

St CHARLES



NOTE:  
BEFORE YOU BEGIN ANY WORK, SEE  
AGREEMENT FOR FIBER OPTIC PROVISIONS

EXHIBIT "A"  
UNION PACIFIC RAILROAD COMPANY  
Berkeley, Cook County, Illinois  
Geneva Sub.

Proposed Sale to Board of Education  
District No. 87

SCALE: 1" = 100'

EXHIBIT B

Section 1. IMPROVEMENTS.

No improvements placed upon the Premises by Lessee shall become a part of the realty.

Section 2. RESERVATIONS AND PRIOR RIGHTS.

A. Lessor reserves to itself, its agents and contractors, the right to enter the Premises at such times as will not unreasonably interfere with Lessee's use of the Premises.

B. Lessor reserves (i) the exclusive right to permit third party placement of advertising signs on the Premises, and (ii) the right to construct, maintain and operate new and existing facilities (including, without limitation, trackage, fences, communication facilities, roadways and utilities) upon, over, across or under the Premises, and to grant to others such rights, provided that Lessee's use of the Premises is not interfered with unreasonably.

C. This Lease is made subject to all outstanding rights, whether or not of record. Lessor reserves the right to renew such outstanding rights.

Section 3. PAYMENT OF RENT.

Rent (which includes the annual rent and all other amounts to be paid by Lessee under this Lease) shall be paid in lawful money of the United States of America, at such place as shall be designated by the Lessor, and without offset or deduction.

Section 4. TAXES AND ASSESSMENTS.

A. Lessee shall pay, prior to delinquency, all taxes levied during the life of this Lease on all personal property and improvements on the Premises not belonging to Lessor. If such taxes are paid by Lessor, either separately or as a part of the levy on Lessor's real property, Lessee shall reimburse Lessor in full within thirty (30) days after rendition of Lessor's bill.

B. If the Premises are specially assessed for public improvements, the annual rent will be automatically increased by 12% of the full assessment amount.

Section 5. WATER RIGHTS.

This Lease does not include any right to the use of water under any water right of Lessor, or to establish any water rights except in the name of Lessor.

Section 6. CARE AND USE OF PREMISES.

A. Lessee shall use reasonable care and caution against damage or destruction to the Premises. Lessee shall not use or permit the use of the Premises for any unlawful purpose, maintain any nuisance, permit any waste, or use the Premises in any way that creates a hazard to persons or property. Lessee shall keep the Premises in a safe, neat, clean and presentable condition, and in good condition and repair. Lessee shall keep the sidewalks and public ways on the Premises, and the walkways appurtenant to any railroad spur track(s) on or serving the Premises, free and clear from any substance which might create a hazard and all water flow shall be directed away from the tracks of the Lessor.

B. Lessee shall not permit any sign on the Premises, except signs relating to Lessee's business.

C. If any improvement on the Premises not belonging to Lessor is damaged or destroyed by fire or other casualty, Lessee shall, within thirty (30) days after such casualty, remove all debris resulting therefrom. If Lessee fails to do so, Lessor may remove such debris, and Lessee agrees to reimburse Lessor for all expenses incurred within thirty (30) days after rendition of Lessor's bill.

D. Lessee shall comply with all governmental laws, ordinances, rules, regulations and orders relating to Lessee's use of the Premises.

Section 7. HAZARDOUS MATERIALS, SUBSTANCES AND WASTES.

A. Without the prior written consent of Lessor, Lessee shall not use or permit the use of the Premises for the generation, use, treatment, manufacture, production, storage or recycling of any Hazardous Substances, except that Lessee may use (i) small quantities of common chemicals such as adhesives, lubricants and cleaning fluids in order to conduct business at the Premises and (ii) other Hazardous Substances, other than hazardous wastes as defined in the Resource Conservation and Recovery Act, 42 U.S.C. §§ 6901, et seq., as amended ("RCRA"), that are necessary for the conduct of Lessee's business at the Premises as specified in Article I. The consent of Lessor may be withheld by Lessor for any reason whatsoever, and may be subject to conditions in addition to those set forth below. It



shall be the sole responsibility of Lessee to determine whether or not a contemplated use of the Premises is a Hazardous Substance use.

B. In no event shall Lessee (i) release, discharge or dispose of any Hazardous Substances, (ii) bring any hazardous wastes as defined in RCRA onto the Premises, (iii) install or use on the Premises any underground storage tanks, or (iv) store any Hazardous Substances within one hundred feet (100') of the center line of any main track.

C. If Lessee uses or permits the use of the Premises for a Hazardous Substance use, with or without Lessor's consent, Lessee shall furnish to Lessor copies of all permits, identification numbers and notices issued by governmental agencies in connection with such Hazardous Substance use, together with such other information on the Hazardous Substance use as may be requested by Lessor. If requested by Lessor, Lessee shall cause to be performed an environmental assessment of the Premises upon termination of the Lease and shall furnish Lessor a copy of such report, at Lessee's sole cost and expense.

D. Without limitation of the provisions of Section 12 of this Exhibit B, Lessee shall be responsible for all damages, losses, costs, expenses, claims, fines and penalties related in any manner to any Hazardous Substance use of the Premises (or any property in proximity to the Premises) during the term of this Lease or, if longer, during Lessee's occupancy of the Premises, regardless of Lessor's consent to such use, or any negligence, misconduct or strict liability of any Indemnified Party (as defined in Section 12), and including, without limitation, (i) any diminution in the value of the Premises and/or any adjacent property of any of the Indemnified Parties, and (ii) the cost and expense of clean-up, restoration, containment, remediation, decontamination, removal, investigation, monitoring, closure or post-closure. Notwithstanding the foregoing, Lessee shall not be responsible for Hazardous Substances (i) existing on, in or under the Premises prior to the earlier to occur of the commencement of the term of the Lease or Lessee's taking occupancy of the Premises, or (ii) migrating from adjacent property not controlled by Lessee, or (iii) placed on, in or under the Premises by any of the Indemnified Parties; except where the Hazardous Substance is discovered by, or the contamination is exacerbated by, any excavation or investigation undertaken by or at the behest of Lessee. Lessee shall have the burden of proving by a preponderance of the evidence that any exceptions of the foregoing to Lessee's responsibility for Hazardous Substances applies.

E. In addition to the other rights and remedies of Lessor under this Lease or as may be provided by law, if Lessor reasonably determines that the Premises may have been used during the term of this Lease or any prior lease with Lessee for all or any portion of the Premises, or are being used for any Hazardous Substance use, with or without Lessor's consent thereto, and that a release or other contamination may have occurred, Lessor may, at its election and at any time during the life of this Lease or thereafter (i) cause the Premises and/or any adjacent premises of Lessor to be tested, investigated, or monitored for the presence of any Hazardous Substance, (ii) cause any Hazardous Substance to be removed from the Premises and any adjacent lands of Lessor, (iii) cause to be performed any restoration of the Premises and any adjacent lands of Lessor, and (iv) cause to be performed any remediation of, or response to, the environmental condition of the Premises and the adjacent lands of Lessor, as Landlord reasonably may deem necessary or desirable, and the cost and expense thereof shall be reimbursed by Lessee to Lessor within thirty (30) days after rendition of Lessor's bill. In addition, Lessor may, at its election, require Lessee, at Lessee's sole cost and expense, to perform such work, in which event, Lessee shall promptly commence to perform and thereafter diligently prosecute to completion such work, using one or more contractors and a supervising consulting engineer approved in advance by Lessor.

F. For purposes of this Section 7, the term "Hazardous Substance" shall mean (i) those substances included within the definitions of "hazardous substance", "pollutant", "contaminant", or "hazardous waste", in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. §§ 9601, et seq., as amended or in RCRA, the regulations promulgated pursuant to either such Act, or state laws and regulations similar to or promulgated pursuant to either such Act, (ii) any material, waste or substance which is (A) petroleum, (B) asbestos, (C) flammable or explosive, or (D) radioactive; and (iii) such other substances, materials and wastes which are or become regulated or classified as hazardous or toxic under federal, state or local law.

#### Section 8. UTILITIES.

A. Lessee will arrange and pay for all utilities and services supplied to the Premises or to Lessee.

B. All utilities and services will be separately metered to Lessee. If not separately metered, Lessee shall pay its proportionate share as reasonably determined by Lessor.

#### Section 9. LIENS.

Lessee shall not allow any liens to attach to the Premises for any services, labor or materials furnished to the Premises or otherwise arising from Lessee's use of the Premises. Lessor shall have the right to discharge any such liens at Lessee's expense.

Section 10. ALTERATIONS AND IMPROVEMENTS; CLEARANCES.

A. No alterations, improvements or installations may be made on the Premises without the prior consent of Lessor. Such consent, if given, shall be subject to the needs and requirements of the Lessor in the operation of its Railroad and to such other conditions as Lessor determines to impose. In all events such consent shall be conditioned upon strict conformance with all applicable governmental requirements and Lessor's then-current clearance standards.

B. All alterations, improvements or installations shall be at Lessee's sole cost and expense.

C. Lessee shall comply with Lessor's then-current clearance standards, except (i) where to do so would cause Lessee to violate an applicable governmental requirement, or (ii) for any improvement or device in place prior to Lessee taking possession of the Premises if such improvement or device complied with Lessor's clearance standards at the time of its installation.

D. Any actual or implied knowledge of Lessor of a violation of the clearance requirements of this Lease or of any governmental requirements shall not relieve Lessee of the obligation to comply with such requirements, nor shall any consent of Lessor be deemed to be a representation of such compliance.

Section 11. AS-IS.

Lessee accepts the Premises in its present condition with all faults, whether patent or latent, and without warranties or covenants, express or implied. Lessee acknowledges that Lessor shall have no duty to maintain, repair or improve the Premises.

Section 12. RELEASE AND INDEMNITY.

A. As a material part of the consideration for this Lease, Lessee, to the extent it may lawfully do so, waives and releases any and all claims against Lessor for, and agrees to indemnify, defend and hold harmless Lessor, its affiliates, and its and their officers, agents and employees ("Indemnified Parties") from and against, any loss, damage (including, without limitation, punitive or consequential damages), injury, liability, claim, demand, cost or expense (including, without limitation, attorneys' fees and court costs), fine or penalty (collectively, "Loss") incurred by any person (including, without limitation, Lessor, Lessee, or any employee of Lessor or Lessee) and arising from or related to (i) any use of the Premises by Lessee or any invitee or licensee of Lessee, (ii) any act or omission of Lessee, its officers, agents, employees, licensees or invitees, or (iii) any breach of this Lease by Lessee.

B. The foregoing release and indemnity shall apply regardless of any negligence, misconduct or strict liability of any Indemnified Party, except that the indemnity, only, shall not apply to any Loss caused by the sole, active and direct negligence of any Indemnified Party if the Loss (i) was not occasioned by fire or other casualty, or (ii) was not occasioned by water, including, without limitation, water damage due to the position, location, construction or condition of any structures or other improvements or facilities of any Indemnified Party.

C. Where applicable to the Loss, the liability provisions of any contract between Lessor and Lessee covering the carriage of shipments or trackage serving the Premises shall govern the Loss and shall supersede the provisions of this Section 12.

D. No provision of this Lease with respect to insurance shall limit the extent of the release and indemnity provisions of this Section 12.

Section 13. TERMINATION.

A. Lessor may terminate this Lease by giving Lessee notice of termination, if Lessee (i) fails to pay rent within fifteen (15) days after the due date, or (ii) defaults under any other obligation of Lessee under this Lease and, after written notice is given by Lessor to Lessee specifying the default, Lessee fails either to immediately commence to cure the default, or to complete the cure expeditiously but in all events within thirty (30) days after the default notice is given.

B. Notwithstanding the term of this Lease set forth in Article II.A., Lessor or Lessee may terminate this Lease without cause upon thirty (30) days' notice to the other party; provided, however, that at Lessor's election, no such termination by Lessee shall be effective unless and until Lessee has vacated and restored the Premises as required in Section 15A), at which time Lessor shall refund to Lessee, on a pro rata basis, any unearned rental paid in advance.

Section 14. LESSOR'S REMEDIES.

Lessor's remedies for Lessee's default are to (a) enter and take possession of the Premises, without terminating this Lease, and relet the Premises on behalf of Lessee, collect and receive the rent from reletting, and charge Lessee for the cost of reletting, and/or (b) terminate this Lease as

provided in Section 13 A) above and sue Lessee for damages, and/or (c) exercise such other remedies as Lessor may have at law or in equity. Lessor may enter and take possession of the Premises by self-help, by changing locks, if necessary, and may lock out Lessee, all without being liable for damages.

Section 15. VACATION OF PREMISES; REMOVAL OF LESSEE'S PROPERTY.

A. Upon termination howsoever of this Lease, Lessee (i) shall have peaceably and quietly vacated and surrendered possession of the Premises to Lessor, without Lessor giving any notice to quit or demand for possession, and (ii) shall have removed from the Premises all structures, property and other materials not belonging to Lessor, and restored the surface of the ground to as good a condition as the same was in before such structures were erected, including, without limitation, the removal of foundations, the filling in of excavations and pits, and the removal of debris and rubbish.

B. If Lessee has not completed such removal and restoration within thirty (30) days after termination of this Lease, Lessor may, at its election, and at any time or times, (i) perform the work and Lessee shall reimburse Lessor for the cost thereof within thirty (30) days after bill is rendered, (ii) take title to all or any portion of such structures or property by giving notice of such election to Lessee, and/or (iii) treat Lessee as a holdover tenant at will until such removal and restoration is completed.

Section 16. FIBER OPTICS.

Lessee shall telephone Lessor at 1-800-336-9193 (a 24-hour number) to determine if fiber optic cable is buried on the Premises. If cable is buried on the Premises, Lessee will telephone the telecommunications company(ies), arrange for a cable locator, and make arrangements for relocation or other protection of the cable. Notwithstanding compliance by Lessee with this Section 16, the release and indemnity provisions of Section 12 above shall apply fully to any damage or destruction of any telecommunications system.

Section 17. NOTICES.

Any notice, consent or approval to be given under this Lease shall be in writing, and personally served, sent by reputable courier service, or sent by certified mail, postage prepaid, return receipt requested, to Lessor at: Contracts & Real Estate Department, Room 1100, 1416 Dodge Street, Omaha, Nebraska 68179; and to Lessee at the above address, or such other address as a party may designate in notice given to the other party. Mailed notices shall be deemed served five (5) days after deposit in the U.S. Mail. Notices which are personally served or sent by courier service shall be deemed served upon receipt.

Section 18. ASSIGNMENT.

A. Lessee shall not sublease the Premises, in whole or in part, or assign, encumber or transfer (by operation of law or otherwise) this Lease, without the prior consent of Lessor, which consent may be denied at Lessor's sole and absolute discretion. Any purported transfer or assignment without Lessor's consent shall be void and shall be a default by Lessee.

B. Subject to this Section 18, this Lease shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, executors, administrators, successors and assigns.

Section 19. CONDEMNATION.

If, as reasonably determined by Lessor, the Premises cannot be used by Lessee because of a condemnation or sale in lieu of condemnation, then this Lease shall automatically terminate. Lessor shall be entitled to the entire award or proceeds for any total or partial condemnation or sale in lieu thereof, including, without limitation, any award or proceeds for the value of the leasehold estate created by this Lease. Notwithstanding the foregoing, Lessee shall have the right to pursue recovery from the condemning authority of such compensation as may be separately awarded to Lessee for Lessee's relocation expenses, the taking of Lessee's personal property and fixtures, and the interruption of or damage to Lessee's business.

Section 20. ATTORNEY'S FEES.

If either party retains an attorney to enforce this Lease (including, without limitation, the indemnity provisions of this Lease), the prevailing party is entitled to recover reasonable attorney's fees.

Section 21. ENTIRE AGREEMENT.

This Lease is the entire agreement between the parties, and supersedes all other oral or written agreements between the parties pertaining to this transaction. Except for the unilateral redetermination of annual rent as provided in Article III., this Lease may be amended only by a written instrument signed by Lessor and Lessee.

**UNION PACIFIC RAILROAD COMPANY**

Real Estate Department

R. D. Uhrich  
Assistant Vice President  
J. A. Anthony  
Director-Contracts  
D. D. Brown  
Director-Real Estate  
M. W. Casey  
General Director-Special Properties  
J. P. Gade  
Director-Facility Management



1800 Farnam Street  
Omaha, Nebraska 68102  
Fax: (402) 997-3601

November 22, 1999

Folder No.: 1833-06

J. L. Hawkins  
Director-Operations Support  
M. E. Hoenan  
Director-Administration & Budgets  
D. H. Lightwine  
Director-Real Estate  
T. K. Love  
Director-Real Estate

MICHEAL A. DEBARTOLO  
SCARIANO, ELLCH, HIMES, SRAGA AND PETRARCA  
TWO PRUDENTIAL PLAZA, SUITE 3100  
180 NORTH STETSON  
CHICAGO, IL 60601-6714

Dear Mr. Debartolo:

This Letter of Understanding is to confirm the understandings reached between James L. Harrel on behalf of Union Pacific Railroad Company (Railroad Company) and Board of Education District No. 87 (Purchaser) covering possible conveyance by the Railroad Company to the Purchaser of certain property (Property) in Berkeley, Illinois as shown on the attached print.

The undersigned is willing to recommend to the Railroad Company's Management a sale of the Property subject to the following terms and conditions:

**1. Description of Property:**

The Property to be conveyed shall consist of a parcel of land totaling approximately 26,800 square feet, as generally depicted on the print attached.

The Purchaser will provide the Railroad Company a Boundary Survey, at no cost to the Railroad Company. A legal description will be prepared accordingly for incorporation into the instrument of conveyance.

**2. Consideration - Sale Price:**

The sale price for the Property shall be \$134,000.00 which is computed as follows:

$$(26,800 \text{ sq. ft.} \times \$5.00/\text{sq. ft.} = \$134,000.00)$$

Area is subject to certification by our Senior Manager-Descriptions and any adjustments from the 26,800 square feet will be prorated in determining final consideration.

**3. Terms - Possession - Conveyance - Reservation:**

Terms of the sale will be cashier's or certified check upon delivery of deed and possession of the Property will be given at that time.

**EXHIBIT**

C

The Property will be conveyed by Quitclaim Deed, as is, where is, without any warranties, and subject to all conditions, restrictions, reservations, easements and encumbrances whether recorded or otherwise applicable to the Property. Railroad Company will reserve from this sale an easement for all existing roadways, utilities and other facilities, including, without limitation, the Railroad Company's rights under any existing lease or license agreement covering any such facilities.

The Purchaser assumes the risk of and agrees to indemnify and hold the Railroad Company harmless, and to defend the Railroad Company against and from any claims, costs, liabilities, expenses (including, without limitation, court costs and attorney fees), or demands of whatsoever nature or source for any defects or environmental problems, latent or obvious, discovered or undiscovered in the Property being conveyed.

**4. Title Insurance and Abstract of Title:**

The Railroad Company will not furnish Title Insurance nor an Abstract of Title to the Property, however, Purchaser may independently obtain same.

**5. Minerals:**

It is understood that the Railroad Company will reserve all of its right, title and interest in and to the minerals and mineral rights applicable to the Property without right of surface entry.

**6. Offer-Closing:**

This offer shall continue in full force and effect for thirty (30) days from the date hereof. In the event this offer is not accepted by the Purchaser within such thirty (30) day period, then this offer shall be void.

This transaction shall close on or before April 1, 2000 with approval by Railroad Company Management as hereinafter set forth.

**7. Tax Proration:**

After closing, local property taxes, if any, and other assessments applicable to the Property shall be prorated as of the date of closing by Railroad Company's tax department.

**8. Submission to Railroad Company Management:**

Following receipt of the Purchaser's acceptance and approval of this Letter of Understanding, this proposal will be submitted to Railroad Company Management for review and approval. The parties hereto shall promptly thereafter take the necessary steps to close this transaction as provided for herein.

**9. Letter of Understanding:**

It is understood and agreed that this document is a Letter of Understanding and not an Agreement to Purchase/Sell until accepted by the Purchaser and approved by Railroad Company Management. Either of the parties hereto shall have the right to terminate negotiations for the purchase/sale of the Property at any time prior to such acceptance and

approval. This termination is without any further obligation of either party to the other.

**10. Negotiations:**

Negotiations concerning this transaction have been carried on by both parties without the intervention of any person who will produce any valid claim against either of the parties hereto, for brokerage commission or other like payment. Each party hereto shall indemnify and hold harmless the other party against and from all claims for brokerage commission or other like payments arising out of this transaction

**11. Transfer Documentation, Excise Tax and Closing Costs:**

All real estate transfer, documentation, closing costs and/or excise taxes resulting from this transaction will be paid for by the Purchaser.

**12. Governmental Approvals:**

It is understood between the parties that this transaction is subject to all governmental restrictions and regulations, as well as the intended use of the property by the Purchaser, including, but not limited to, subdivision and zoning regulations and building and environmental permits. Purchaser, at Purchaser's sole expense, shall attempt to satisfy all governmental requirements and obtain all necessary permits. In the event the Purchaser is unable to satisfy such requirements or obtain the necessary permits before closing, Purchaser shall, upon written notification to the Railroad Company, elect to terminate this transaction. This termination is without any further obligation of either party to the other.

**13. Fiber Optics:**

Purchaser will contact the Seller's Telecommunications Operations Center at 1-800-336-9193 and request to have locate their facilities in the field to ensure that their facilities are not affected by this transaction. Should it be determined that certain facilities do affect the Property, Purchaser will request the affected telecommunications company to notify Jim Harrel, in writing, at 1800 Farnam St., Omaha, NE 68102.

**14. Subdivision Map Act:**

It may be necessary to comply with provisions of the Subdivision Map Act. In obtaining approvals from the appropriate governing body, various requirements may be established with regard to street widths, street improvements, drainage, plan approvals, design, related surveys and map preparation, fees and various matters. Any and all expenses in this regard, including dedications, lot line adjustments and/or parcel maps, will be done by and at the sole cost and expense of the Purchaser.

**15. Limited Permission to Enter Upon the Property for Certain Purposes:**

Purchaser, and its agents and contractors, are granted the privilege for a period of ninety (90) days after the date of Purchaser's execution of this Letter of Understanding of entering upon the Property for the purpose of performing non-invasive Phase I environmental audits, surveys, engineering and feasibility studies of the Property as Purchaser may deem necessary to determine the suitability of the Property. No invasive activities are permitted, including, without limitation, digging, boring or environmental sampling.

If the sale of the Property to Purchaser does not close for any reason whatsoever, then Purchaser shall surrender to Railroad Company originals of all audits, soils, engineering and any other reports prepared for Purchaser pertaining to the Property and such reports shall become the sole property of Railroad Company without cost or expense of Railroad Company (and the contents thereof shall be kept confidential by the Purchaser and Purchaser's consultants). Regardless of whether or not the sale of the property closes, Purchaser shall promptly furnish Railroad Company with the original of any and all reports on environmental assessments performed for the benefit of Purchaser.

Entry on the Property by Purchaser, its agents or contractors, is subject to the following terms and conditions:

(a) Purchaser agrees to indemnify, defend and save harmless Railroad Company and/or Railroad Company's Affiliates, their officers, agents, servants and employees, against and from any and all liability, loss, costs and expense of whatsoever nature growing out of personal injury to or death of persons whomsoever, or loss or destruction of or damage to property whatsoever, where such personal injury death, loss, destruction or damage arises in connection with or incident to the occupation or use of the Property by, or the presence thereof by the Purchaser, Purchaser's agents, contractors, employees or licensees prior to closing;

(b) Purchaser covenants and agrees to pay in full for all materials joined or affixed to the Property and to pay in full all persons who perform labor upon the Property, and not to permit or suffer any mechanic's or materialman's lien of any kind or nature to be enforced against the Property for any work done or materials furnished thereon at the instance or request or on behalf of Purchaser; and Purchaser agrees to indemnify and hold harmless Railroad Company against and from any and all liens, claims, demands, costs and expenses of whatsoever nature in any way connected with or growing out of such work done, labor performed or materials furnished prior to closing;

© If the purchase of the Property does not close, Purchaser shall, within 30 days and at Purchaser's sole expense, restore the Property to the same condition it was in immediately prior to the time Purchaser entered the Property, failing in which Railroad Company may perform the work of restoration and Purchaser shall reimburse Railroad Company for the cost and expense thereof within thirty (30) days after rendition of bill therefor by Railroad Company; and

(d) Notwithstanding any provisions in this Letter of Understanding to the contrary, in the event this Letter of Understanding is terminated for any reason whatsoever, Purchaser nevertheless shall be obligated to comply with the provisions of this Section.

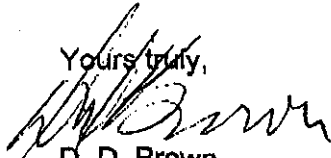
#### **16. Eminent Domain:**

The parties acknowledge that the City has the authority to condemn the Property under its power of eminent domain. The City represents that it will institute eminent domain proceedings in the event that the Railroad Company does not sell the Property upon the City's demand pursuant to this agreement. The parties further acknowledge that the Railroad Company intends to treat the sale as being sold under imminent threat of condemnation pursuant to section 1033 of the Internal Revenue Code of 1986 (26 U. S. C.).

Purchaser acknowledges that James L. Harrel is a licensed real estate broker and is acting in this transaction as the agent (and employee) of the Railroad.

If the foregoing reflects your understanding of the proposal reached between the Railroad Company and the Purchaser with respect to the purchase/sale of the Property, please secure the execution of this Letter of Understanding. **Return to me one copy of the signed letter advising the correct legal entity in which the Purchaser desires to take title to the Property.** Should you have any questions, please call Jim Harrel at (402) 997-3557.

Yours truly,



D. D. Brown  
Director - Real Estate

Acknowledged and Accepted:

\_\_\_\_\_ day of \_\_\_\_\_, 19\_\_.

**BOARD OF EDUCATION SCHOOL DISTRICT NO. 87**

By \_\_\_\_\_

Title will be taken in the following name(please print):

\_\_\_\_\_

Mailing Address: \_\_\_\_\_

If Corporation, State of Incorporation: \_\_\_\_\_

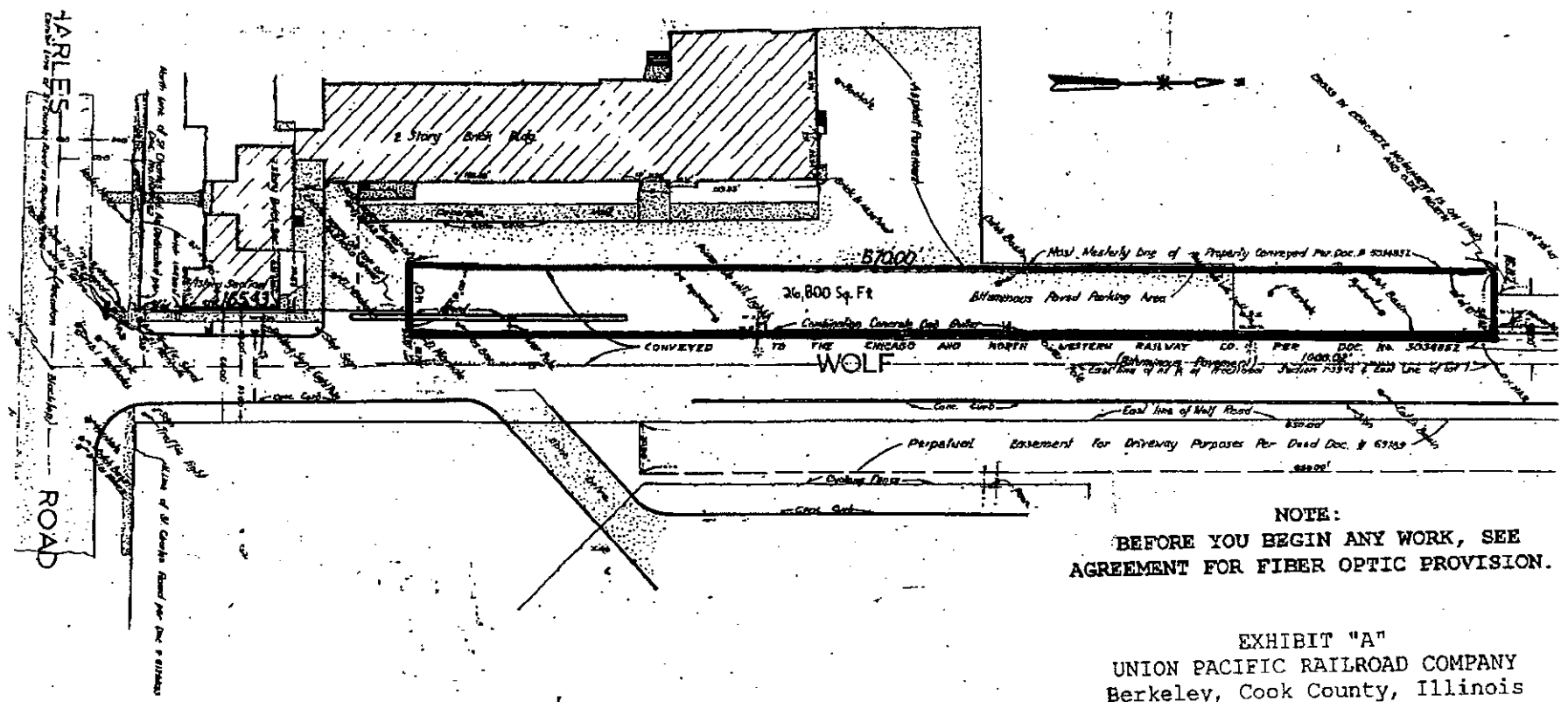
If Husband & Wife, Title as(check one):

\_\_\_\_\_ Joint Tenants with Rights of Survivorship

\_\_\_\_\_ Tenants in Common

\_\_\_\_\_ Community Property





NOTE:  
BEFORE YOU BEGIN ANY WORK, SEE  
AGREEMENT FOR FIBER OPTIC PROVISION.

EXHIBIT "A"  
UNION PACIFIC RAILROAD COMPANY  
Berkeley, Cook County, Illinois  
Geneva Sub,

Proposed Sale to Board of Education  
District No. 87

SCALE: 1" = 100'

OFFICE OF CONTRACTS & REAL ESTATE  
OMAHA, NE Date: November 22, 1999

\* L E G E N D \*

SALE AREA SHOWN . . . . .

